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7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 ADAM HOWE, Individually,

11 Plaintiff,

12 vs.

13 GEICO ADVANTAGE INSURANCE,
DOES I through X, ROE CORPORATIONS
14 I through X, inclusive,

15 Defendant(s)

CASE NO.: 2:22-cv-01171

**DEFENDANT GEICO ADVANTAGE
INSURANCE'S MOTION TO STAY
DISCOVERY ON EXTRA-
CONTRACTUAL CLAIMS, COUNTS
TWO AND THREE OF PLAINTIFF'S
AMENDED COMPLAINT**

16 COME NOW, Defendant, GEICO ADVANTAGE INSURANCE, by and through its
17 counsel, the law firm of WINNER & BOOZE, for the purpose of presenting the instant Motion
18 to stay discovery on the extra-contractual or, "bad faith", claims (counts II & III of Plaintiffs'
19 Amended Complaint), in order to avoid unfair prejudice against the defendant and save costs
20 until the pending Motion for partial summary judgment in regard to said claims (ECF No. 11) is
21 heard.

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1 This motion is made and based upon the pleadings and papers on file herein, the
2 Memorandum of Points and Authorities attached hereto, exhibits attached hereto, defendant's
3 motion for partial summary judgment and the exhibits attached thereto (ECF No. 11), and any
4 oral argument this Court may entertain at the time of hearing.

5 DATED this __2nd__ day of November, 2022.

6
7 WINNER & BOOZE

8
9 /s/ Matthew J. Douglas
10 Matthew J. Douglas, Esq.
11 Nevada Bar No. 11371
12 1117 South Rancho Drive
13 Las Vegas, Nevada 89102
14 *Attorneys for GEICO Advantage Ins.*

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16 **DECLARATION OF MATTHEW J. DOUGLAS IN SUPPORT OF**
17 **DEFENDANT'S MOTION TO STAY DISCOVERY IN COMPLIANCE**
18 **WITH LR 26-6(c) & LR IA 1-3(f)**

19 I, Matthew J. Douglas, under penalty of perjury, does hereby declare as follows:

20 1. I am an attorney duly licensed to practice in all courts of the State of Nevada and
21 Nevada Federal District Courts, at the law firm of WINNER & BOOZE, the attorneys of record
22 for Defendant, GEICO ADVANTAGE INSURANCE (hereinafter "GEICO"), herein.

23 2. I have personal knowledge of the matters set forth below and could competently
24 testify thereto if called to do so, and I attest to the contents of this Declaration in support of
25 Defendant's instant Motion to Stay Discovery.

26 3. Pursuant to LR 26-6(c) and LR IA 1-3(f), I personally spoke with and, conferred
27 with, Plaintiff's counsel, Justin Wilson, Esq. on November 1, 2022, to discuss the possibility of
28 resolving the issues raised in this Motion to stay discovery without having to seek the
intervention of the Court.

Signed: **Matthew J. Douglas**
Matthew J. Douglas

1 Following the motion for partial summary judgment being filed, defendant asked
2 plaintiff if he would stay discovery on his extra-contractual or, 'bad faith' claims. After a meet
3 and confer the parties were still unable to agree and, thus, the present motion is brought. The
4 breadth of the discovery plaintiffs seek makes the potential costs and prejudice too great for
5 defendant considering the position of this case and, thus, asks this court to rule on this motion.

6 Quite simply, defendant can meet the 2-prong test for a stay – *i.e.* that there is a
7 dispositive motion pending which would completely potentially dispose of Counts II & III of
8 the Amended Complaint and, second, no further discovery is needed for the court to address the
9 motion for partial judgment on those claims.

10 Therefore, allowing **any** discovery by plaintiff into GEICO's claims handling/training
11 materials and/or other discovery regarding alleged "bad faith", would only serve to increase the
12 expense of these proceedings without any chance of plaintiff prevailing on these claims. Further,
13 unfettered discovery into unrelated claims is too broad and costly for the issues involved herein.
14 As such, discovery on the "extra-contractual" claims – for breach of the implied covenant of
15 good faith and fair dealing and Breach of the Nevada Unfair Claims Practices Act, should be
16 stayed.

17 II.

18 ARGUMENT

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20 Defendant moves to stay discovery on extra-contractual claims (*i.e.* "bad faith"), Counts
21 II & III, pending a ruling on the motion for partial summary judgment on those claims.
22 Defendant asserts that the pending partial summary judgment motion is potentially dispositive
23 on those claims, no further discovery is required for the court to rule, and no prejudice results to
24 Plaintiff while substantial prejudice would accrue to GEICO.

25
26 The Ninth Circuit has affirmed that district courts have "wide discretion in controlling
27 discovery." *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). While the Ninth Circuit
28

1 has not provided a clear standard for evaluating a motion to stay discovery pending resolution
2 of a potentially dispositive motion, it has affirmed that district courts may grant such a motion
3 for good cause. *Id.* (affirming district court's decision to stay discovery pending resolution of
4 motion for summary judgment); *See Wenger v. Monroe*, 282 F.3d 1068, 1077 (9th Cir.
5 2002) (affirming district court's grant of protective order staying discovery pending resolution
6 of motion to dismiss). *Federal Rule of Civil Procedure 26* states “[t]he court may, for good
7 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression,
8 or undue burden or expense,” including forbidding discovery. *Fed. R. Civ. P. 26(c)(1)*. Indeed,
9 the U.S. Supreme Court has endorsed that discovery may be stayed pending resolution of a
10 dispositive motion. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1954 (2009) (“Because respondent’s
11 complaint is deficient under Rule 8, he is not entitled to discovery...”); *Bell Atlantic Corp. v.*
12 *Twombly*, 550 U.S. 554, 564, n. 8 (2007) (Referring to an “understanding that, before proceeding
13 to discovery, a complaint must allege facts suggestive of illegal conduct”).

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16 “[T]he Federal Rules of Civil Procedure does not provide for automatic or blanket stays
17 of discovery when a potentially dispositive motion is pending.” *Mlejnecky v. Olympus Imaging*
18 *Am. Inc.*, 2011 WL 489743, at 6 (E.D. Cal. 2011). District courts do not favor blanket stays of
19 discovery because “delaying or prolonging discovery can create unnecessary litigation expenses
20 and case management problems.” *Salazar v. Honest Tea, Inc.*, 2015 WL 6537813, at 1 (E.D.
21 Cal. 2015) (citing *Simpson v. Specialty Retail Concepts, Inc.*, 121 F.R.D. 261, 263 (M.D.N.C.
22 1988)). When considering a motion to stay discovery a district court “inevitably must balance
23 the harm produced by a delay in discovery against the possibility that the motion will be granted
24 and entirely eliminate the need for such discovery.” *Simpson*, 121 F.R.D. at 263.

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26 District courts in the Ninth Circuit may apply a two-pronged test to evaluate whether a
27 stay discovery of discovery may issue. *Mlejnecky*, 2011 WL 489743, at 6; *Seven Springs Ltd.*
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1 *P'ship v. Fox Capital Mgmt. Corp.*, 2007 WL 1146607, at 1 (E.D. Cal. 2007), *Tradebay LLC v.*
 2 *eBay, Inc.*, 278 F.R.D. 597, 602 (D. Nev. 2011). The first prong of the test requires that the
 3 pending motion “be potentially dispositive of the entire case, or at least dispositive on the issue
 4 at which discovery is aimed.” *Id.* For the second prong, the court can “determine whether the
 5 pending, potentially dispositive motion can be decided absent additional discovery.” *Id.* If either
 6 prong is not met, discovery should proceed. *Id.*

8 Defendant asserts the motion for partial summary judgment would be potentially
 9 dispositive of both Counts ii & III and that the decision on the motion to dismiss can be made
 10 absent further discovery. Defendant incorporates by reference its entire Motion for partial
 11 summary judgment, ECF No. 11, as if it were more fully set forth herein.¹ First, as this court can
 12 plainly see, defendant’s motion is clearly dispositive on the extra-contractual claims as, if it is
 13 granted, would completely dispose of counts II & II under F.R.C.P. 56. Accordingly, defendant
 14 satisfies prong one of the test for a stay of discovery – the motion is clearly dispositive on the
 15 merits for counts II & III.

17 Defendant also clearly satisfies prong two of the test – that no further discovery is needed
 18 to decide the motion and, thus, the motion is ready for ruling without the need of additional
 19 discovery. Indeed, defendant’s motion is based on a **legal issue** – namely whether GEICO’s
 20 reliance on a medical expert report to dispute plaintiff’s valuation of his claim is sufficient to
 21 create a ‘genuine dispute’, precluding ‘bad faith.’

23 In this way, the motion for partial summary judgment is set for ruling on a discrete legal
 24 issue, which is potentially dispositive of both counts II & III, and for which no further discovery
 25 is needed. In the case of *Sekera v Allstate Ins. Co.*, 763 Fed. Appx. 629 (9th Cir. 2019), the Ninth
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27 ¹ The Court may take a look at the merits of the underlying motions to dismiss in considering
 28 whether a limited stay is warranted. *Tradebay LLC v. eBay, Inc.*, 278 F.R.D. 597, 602 (D. Nev. 2011)

1 Circuit held that an insurer's reliance on the findings of an Independent Medical Exam is
2 evidence of a 'genuine dispute', precluding bad faith. See also *Fraley v Allstate Ins. Co.*, 97 Cal.
3 Rptr. 2d 386 (Ca. App. 4th 2000) (reliance upon experts for repair estimates considered a
4 genuine dispute).

5 Defendant asserts its chances for success are good given the above-cited case law. In
6 short, as a genuine dispute exists, plaintiff cannot maintain either counts II or III of his complaint
7 either and, as **this issue is dispositive** and, **requires no further discovery**, defendant asks this
8 court to stay discovery on alleged extra-contractual claims.
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10 Conducting discovery would be unfairly prejudicial to GEICO where plaintiffs' clearly
11 seek expensive, confidential, and intrusive discovery into claims handling and, issues wholly
12 unrelated to the plaintiffs' deficient claims. This type of discovery is not only costly, but also
13 clearly unrelated, prejudicial, and unnecessary when it is founded upon deficient claims. Thus,
14 the court should weigh this clear prejudice and costs to defendant along with any claim of
15 efficiency in deciding to stay. As such, it is respectfully requested that this Court stay all
16 discovery or, alternatively stay all discovery on the extra-contractual claims.
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III.

CONCLUSION

WHEREFORE, defendant GEICO ADVANTAGE INSURANCE respectfully requests that this Honorable Court GRANT defendant's Motion to Stay the discovery on counts two and three of plaintiffs' complaint, for breach of the implied covenant of good faith and fair dealing, and breach of the Nevada Unfair Claims Practices Act pending the outcome of the dispositive motion regarding same claims, ECF No. 11.

DATED this 2nd day of November, 2022.

WINNER & BOOZE

/S/ Matthew J. Douglas
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Las Vegas, Nevada 89102
Attorneys for Defendant GEICO

ORDER

IT IS ORDERED that ECF No. 13 Defendant's Motion to Stay Discovery is GRANTED as unopposed. See LR 7-2(d).

IT IS FURTHER ORDERED that the hearing scheduled for 12/9/2022 is VACATED.

IT IS SO ORDERED

DATED: 12:01 pm, November 21, 2022



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE